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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 RONALD L. GRAY, III,

10 Plaintiff,

Case No. C12-664-MJP-JPD

11 v.

12 STATE OF WASHINGTON, *et al.*,

REPORT AND RECOMMENDATION

13 Defendants.

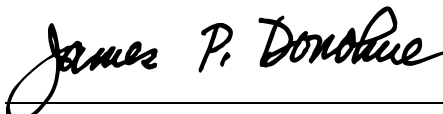
14 Plaintiff is currently incarcerated in the Norm Maleng Regional Justice Center where he  
15 is apparently awaiting sentencing on state court criminal charges. He has presented to this Court  
16 for filing a civil rights complaint under 42 U.S.C. § 1983 together with an application to proceed  
17 with the action *in forma pauperis*. Plaintiff alleges in his complaint that the prosecutor in his  
18 state court criminal proceedings violated his federal constitutional rights during the course of  
19 those proceedings and thereby denied him a fair trial. Plaintiff seeks dismissal of the criminal  
20 case and money damages.

21 Where a prisoner challenges the fact or duration of his confinement, his sole federal  
22 remedy is a writ of habeas corpus to which the exhaustion requirement applies. *Preiser v.*  
23 *Rodriguez*, 411 U.S. 475, 489-90 (1973). In *Heck v. Humphrey*, 512 U.S. 477 (1994), the United

1 States Supreme Court held that a § 1983 claim that calls into question the lawfulness of a  
2 plaintiff's conviction or confinement does not accrue "unless and until the conviction or sentence  
3 is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* at  
4 489.

5 A decision in plaintiff's favor on the constitutional claims identified in his complaint  
6 would necessarily imply the invalidity of his current confinement. However, plaintiff has not  
7 demonstrated that his ongoing confinement has been invalidated in any way. Thus, under *Heck*,  
8 plaintiff's § 1983 claims have not yet accrued and are therefore not cognizable in this proceeding.  
9 As plaintiff has not stated a cognizable claim for relief in these proceedings, this Court  
10 recommends that plaintiff's application to proceed *in forma pauperis* be denied and that this  
11 action be dismissed, without prejudice, prior to service, for failure to state a claim upon which  
12 relief may be granted under 28 U.S.C. § 1915A(b)(1). A proposed Order reflecting this  
13 recommendation is attached.

14 DATED this 8th day of May, 2012.

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16 JAMES P. DONOHUE  
17 United States Magistrate Judge  
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